

California Regional Water Quality Control Board
Santa Ana Region
Staff Report
August 13, 2004

ITEM: 10

SUBJECT: Mandatory Penalty Complaint No. R8-2003-0093 for USA Gasoline Corporation, Station #239, Big Bear Lake – Resolution No. R8-2004-0069 to rescind Order No. R8-2004-0019 and adopt Order No. R8-2004-0066

BACKGROUND

On September 2, 2003, the Executive Officer issued Mandatory Penalty Complaint (MPC) No. R8-2003-0093 to USA Gasoline Corporation (USA) for alleged violations of the General Groundwater Cleanup Permit, Order No. R8-2002-0007 (General Permit). In the MPC (attached), the Executive Officer proposed an assessment of \$24,000 for the alleged violations.

On January 22, 2004, the California Regional Water Quality Control Board, Santa Ana Region (Board) adopted Order No. R8-2004-0019, affirming MPC No. R8-2003-0093. MPC No. R8-2003-0093 was issued by the Executive Officer to USA for violations of the General Permit for which the Board must impose mandatory penalties pursuant to California Water Code (Water Code) Section 13385(h) and (i).

INTRODUCTION

MPC No. R8-2003-0093 miscalculated the total assessment by imposing penalties in the amount of \$24,000, rather than \$18,000. The matter before the Board is to consider adoption of Resolution No. R8-2004-0069, which would rescind Order No. R8-2004-0019 and adopt Order No. R8-2004-0066. Adopting Order No. R8-2004-0066 would result in the imposition of penalties on USA for violations of the General Permit for which the Board must issue mandatory penalties pursuant to Water Code Section 13385(h) and (i), but would adjust the total assessed amount from \$24,000 to \$18,000.

DISCUSSION

USA currently operates a gasoline service station at 41339 Big Bear Boulevard in the City of Big Bear Lake. Groundwater beneath the site is contaminated from underground storage tank related leaks and a groundwater treatment system treats and discharges groundwater from the site.

On July 16, 2002, USA was authorized to discharge treated water from its groundwater cleanup system under the General Permit in accordance with

Monitoring and Reporting Program No. 2002-0007-0091. The General Permit regulates the discharge of treated groundwater from petroleum-contaminated sites and contains effluent limits for a number of constituents, including daily maximum limits for tertiary butyl alcohol (TBA) and dichlorobromomethane (DCBM). TBA and DCBM are Group II pollutants as specified in Appendix A to Section 123.45 of Title 40 CFR.

On January 22, 2004, the Board adopted Order No. R8-2004-0019, affirming mandatory minimum penalties (MPC No. R8-2003-0093) of \$24,000, for multiple violations of TBA and DCBM effluent limits, which occurred between July 2002 and January 2003.

Following the Board's adoption of Order No. R8-2004-0019, staff discovered that the penalty assessed by MPC No. R8-2003-0093 was erroneously calculated. The determination of violations was based on staff's review of USA's self-monitoring reports, which indicated daily and monthly average effluent limit violations for TBA and DCBM. Utilizing EPA Guidance QA/G-4 and G-9, staff identified three monthly average violations. These three monthly average violations, along with five daily effluent exceedences for DCBM and TBA, resulted in a total of eight violations.

Staff has subsequently determined that the application of this EPA Guidance method was incorrect. The correct method for determining compliance was to apply protocol set forth in the State Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays and Estuaries. When this protocol is applied, it results in a determination of six violations, rather than eight, subject to mandatory minimum penalties under Water Code Section 13385 (h). Accordingly, the assessment payable by USA should be reduced by \$6,000.

Pursuant to Water Code Section 13385(h) and (i), the six violations are still subject to mandatory minimum penalties of \$3,000 each, resulting in recalculated mandatory minimum penalties of \$18,000.

STATEWIDE ENFORCEMENT POLICY

On February 19, 2002, the State Water Resources Control Board adopted a Revised Water Quality Enforcement Policy to ensure that enforcement actions throughout the State are fair, firm and consistent. The above-described mandatory penalty complaint is in accordance with the State Enforcement Policy.

RECOMMENDATION

Board staff recommends that the Board affirm Resolution No. R8-2004-0069, which will rescind Order No. R8-2004-0019 and adopt Order No. R8-2004-0066.

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

In the matter of:)	Order No. R8-2004-0066
)	for
USA Gasoline Corporation)	Mandatory Minimum Penalties
30101 Agoura Court, Suite 200)	(replacing Order No. R8-2004-0019)
Agoura Hills, CA 91301)	
)	
<u>Attn: Chuck Miller</u>)	

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), held a hearing on August 13, 2004 to receive testimony and take evidence on the staff recommendation to rescind Order No. R8-2004-0019, which in turn, was based upon allegations contained in Complaint No. R8-2003-0093, dated September 2, 2003, and to reconsider the imposition of mandatory penalties in the amount of \$24,000, affirmed by Order No. R8-2004-0019 on January 22, 2004. The Board finds as follows:

1. On January 23, 2002, the Board adopted Waste Discharge Requirements, Order No. R8-2002-0007 (NPDES No. CAG918001), General Groundwater Cleanup Permit (Permit). The Permit regulates discharges of extracted and treated groundwater resulting from the cleanup of groundwater polluted by petroleum hydrocarbons and/or solvents within the Santa Ana Region. The Permit contains effluent limits for a number of constituents, including tertiary butyl alcohol (TBA) and dichlorobromomethane (DCBM). On July 16, 2002, the Executive Officer enrolled USA Gasoline Corporation (USA) under the Permit, authorizing it to discharge treated groundwater from USA Station #239, located at 41339 Big Bear Boulevard in the City of Big Bear Lake. The discharge from USA's system was directed to a storm drain that ultimately discharges into Big Bear Lake, a water of the United States. USA was required to monitor the discharge in accordance with Monitoring and Reporting Program No. 2002-0007-0091.
2. USA submitted self-monitoring reports, which indicated that it had tertiary butyl alcohol TBA and DCBM effluent violations between July 2002 and January 2003. Based on staff review, a total of eight violations were originally identified. Six of these violations were serious and the other two were chronic. All eight violations were determined to be subject to mandatory minimum penalties.
3. Water Code Sections 13385(h) and (i) require the Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each serious and/or chronic violation.
4. On September 2, 2003, the Executive Officer issued Complaint No. R8-2003-0093 to USA proposing that the Board impose a mandatory minimum penalty of \$24,000 on USA for these eight effluent violations.

5. On January 22, 2004, the Board adopted Order No. R8-2004-0019, affirming that a mandatory minimum penalty of \$24,000 be imposed on USA for the violations cited above. The assessment set forth in Order No. R8-2004-0019 was based on use of an erroneous protocol to determine discharges subject to mandatory minimum penalties. Rather than eight violations as set forth in Order No. R8-2004-0019, USA had only six violations subject to mandatory minimum penalties during the subject period.
6. In accordance with Water Code Section 13385(h), the total mandatory minimum penalty for the six effluent limitation violations cited in Section 2, above, should be \$18,000.
7. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 2100 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.

IT IS HEREBY ORDERED that, pursuant to California Water Code Section 13385, mandatory penalties be imposed on USA Gasoline Corporation in the amount of \$18,000 for violations cited, rather than the \$24,000 proposed in Complaint No. R8-2003-0093 and affirmed by Order No. R8-2004-0019. This revised penalty amount of \$18,000 shall be payable as set forth below.

1. USA shall pay the entire \$18,000 by check made out to State Water Pollution Cleanup and Abatement Account, and delivered to the State Water Resources Control Board by September 17, 2004.
2. The Executive Officer is authorized to refer this matter to the Attorney General for enforcement.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on August 13, 2004.

By this action, it is the intent of the Board solely to correct the error in use of assessment calculation protocol. It is not the intent of the Board to provide the discharger or Waterstone with a second opportunity to seek review of the Order, which in all other respects remains unchanged. However, pursuant to Water Code Section 13320, USA may petition the State Water Resources Control Board for review of this Order. If USA chooses to do so, USA must submit the petition to the State Water Resources Control Board within 30 days of the Board's adoption of this Order.

Gerard J. Thibeault
Executive Officer

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

RESOLUTION NO. R8-2004-0069

Rescinding Order No. R8-2004-0019 And Adopting Order No. R8-2004-0066

Whereas, the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), finds that:

1. On January 22, 2004, this Board adopted Order No. R8-2004-0019 affirming mandatory minimum penalties proposed against USA Gasoline Corporation (USA). The adoption of Order No. R8-2004-0019 followed a hearing during which Staff and representatives of Waterstone Environmental, Inc. (Waterstone) presented evidence and argument regarding Mandatory Penalties Complaint (MPC) No. R8-2003-0093;
2. USA filed a petition with the State Water Resources Control Board seeking review of Order No. R8-2004-0019 on various specified grounds;
3. By letter dated April 27, 2004, the State Water Resources Control Board dismissed the petition filed by Waterstone, on behalf of USA;
4. Following this Board's adoption of Order No. R8-2004-0019, Staff discovered that the penalty assessed by MPC No. R8-2003-0093 was erroneously determined;

The determination of violations included in Order No. R8-2004-0019 was based on Staff's review of USA's self-monitoring reports, which indicated effluent limit violations for tertiary butyl alcohol (TBA) and dichlorobromomethane (DCBM). The determination utilized an application of EPA Guidance QA/G-4 and G-9, which resulted in a finding of eight violations subject to mandatory minimum penalties. Following the Board's adoption of Order No. R8-2004-0019, Staff determined that the EPA Guidance was the incorrect method to apply to the reported discharges. The correct method is that protocol set forth in the State Policy for Implementation of Toxics Standards for Inland Surface Water, Enclosed Bays and Estuaries, 2000, Section 2.4.5. This is the protocol normally used in determining discharges subject to mandatory minimum penalties. Application of this protocol to the reported discharges yields a result of six violations subject to mandatory minimum penalties under California Water Code Section 13385(h). Accordingly, the assessment payable by USA should be reduced by \$6,000;

5. The error described above was not among the grounds set forth by USA or Waterhouse in support of the petition filed with the State Water Resources Control Board;
6. The error resulted in the imposition by the Board of an erroneous mandatory minimum penalty in Order No. R8-2004-0019;
7. It is in the interest of justice, pursuant to California Water Code Section 13385(e), that the assessment in Order No. R8-2004-0019 be reduced to reflect use of the correct method to determine whether a discharge is a violation subject to mandatory minimum penalties;
8. Staff has notified USA and Waterstone of its intent to recommend that Order No. R8-2004-0019 be rescinded and replaced with Order No. R8-2004-0066;
9. In all other respects, Order No. R8-2004-0019 should be reaffirmed;
10. USA and Waterstone consent to the rescission of Order No. R8-2004-0019 and adoption of Order No. R8-2004-0066;

NOW THEREFORE, BE IT RESOLVED:

1. Order No. R8-2004-0019 is hereby rescinded and replaced by Order No. R8-2004-0066, which corrects the erroneous assessment amount and reflects the appropriate mandatory minimum penalty;
2. By this action, it is the intent of the Board solely to correct the error in use of assessment calculation protocol. It is not the intent of the Board to provide the discharger or Waterstone with a second opportunity to seek review of Order No. R8-2004-0019, which in all other respects, remains unchanged.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Santa Ana Region, on August 13, 2004.

Gerard J. Thibeault
Executive Officer

California Regional Water Quality Control Board
Santa Ana Region

Monitoring and Reporting Program No. R8-2003-0061-093
NPDES No. CAG998001

For
Running Springs Water District
General Waste Discharge Requirements for Dewatering Projects
Santa Ana Region

A. MONITORING AND REPORTING REQUIREMENTS

Monitoring and reporting shall be in accordance with the following:

1. All monitoring reports, or information submitted to the Regional Board shall be signed and certified in accordance with 40 CFR 122.22.
2. All laboratory analyses shall be performed in accordance with test procedures under 40 CFR 136 (revised as of May 14, 1999) "Guidelines Establishing Test Procedures for the Analysis of Pollutants," promulgated by the United States Environmental Protection Agency (EPA), unless otherwise specified in this monitoring and reporting program (M&RP). In addition, the Regional Board and/or EPA, at their discretion, may specify test methods that are more sensitive than those specified in 40 CFR 136. Unless otherwise specified herein, organic pollutants shall be analyzed using EPA method 8260, as appropriate, and results shall be reported with ML or PQL and MDL.
3. Chemical, bacteriological, and bioassay analyses shall be conducted at a laboratory certified for such analyses by the State Department of Health Services or EPA or at laboratories approved by the Executive Officer of the Regional Board.
4. All analytical data shall be reported with method detection limits (MDLs) and with identification of either practical quantitation levels (PQLs) or limits of quantitation (LOQs).
5. Whenever the discharger monitors any pollutant more frequently than is required by this general permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the discharge monitoring report specified by the Executive Officer.
6. The discharger shall deliver a copy of each monitoring report in the appropriate format to:

California Regional Water Quality Control Board
Santa Ana Region
3737 Main Street, Suite 500
Riverside, CA 92501-3348

7. The discharger may request a reduction in the constituents to be monitored and/or a reduction in monitoring frequency for a specific constituent(s) subject to the approval of the Executive Officer when the conditions stipulated in Provisions E.7. of this general permit are met.
8. The discharger shall assure that records of all monitoring information are maintained and accessible for a period of at least five years from the date of the sample, report, or application. This period of retention shall be extended during the course of any unresolved litigation regarding this discharge or by the request of the Board at any time. Records of monitoring information shall include:
 - a. The date, exact place, and time of sampling or measurements;
 - b. The individual(s) who performed the sampling, and/or measurements;
 - c. The date(s) analyses were performed;
 - d. The individual(s) who performed the analyses;
 - e. The analytical techniques or methods used, including any modification to those methods;
 - f. All sampling and analytical results, including
 - 1) Units of measurement used;
 - 2) Minimum reporting limit for the analysis (minimum level, practical quantitation level (PQL));
 - 3) Results less than the reporting limit but above the method detection limit (MDL);
 - 4) Data qualifiers and a description of the qualifiers;
 - 5) Quality control test results (and a written copy of the laboratory quality assurance plan);
 - 6) Dilution factors, if used; and
 - 7) Sample matrix type; and;
 - g. All monitoring equipment calibration and maintenance records;
 - h. All original strip charts from continuous monitoring devices;
 - i. All data used to complete the application for this general permit; and,
 - j. Copies of all reports required by this general permit.
9. Weekly samples shall be collected on a representative day of each week.
10. Annual samples shall be collected on the month the discharge authorization letter was issued.

B. EFFLUENT MONITORING

1. A sampling station shall be established for the point of discharge where representative samples of the discharge can be obtained before the discharge mixes with the receiving waters.
2. The following shall constitute the effluent monitoring program:

Constituent	Type of Sample	Units	Minimum Frequency of Sampling and Analysis
Flow	-----	gpd	Daily
Total Residual Chlorine ^{1, 2}	Grab	mg/l	During the first 30 minutes of each discharge and weekly thereafter for continuous discharges
Total Suspended Solids ^{2, 3}	"	"	"
Oil and Grease ²	"	"	"

C. REPORTING

1. Five days prior to any discharge from locations already reported, the discharger shall notify the Regional Board staff by phone or by a fax letter indicating the date and time of the proposed discharge.
2. Five days prior to any planned discharge⁴ from locations not yet reported, the discharger shall notify the Regional Board staff by phone or by a fax letter indicating the following:
 - 1) Specific type of the proposed wastewater discharge (see listing on Finding 1 of the Order);
 - 2) The estimated average and maximum daily flow rates;
 - 3) The frequency and duration of the discharge;
 - 4) The affected receiving water(s);
 - 5) A description of the proposed treatment system (if appropriate); and
 - 6) A description of the path from the point of initial discharge to the ultimate location of discharge (fax a map if possible);

¹ Unless it is known that chlorine is not in the discharge.


² Not applicable if all wastewater will percolate prior to reaching receiving waters.

³ Not applicable for discharges from established water supply systems where no suspended solids are expected (hydrant/water line flushing).

⁴ For those unplanned discharges, as much prior notification as possible is required before any discharge is initiated.

3. Monitoring reports shall be submitted by the 30th day of each month following the monitoring period. The monitoring reports shall cover the previous month's monitoring activities and shall include:
 - a. The results of all laboratory analyses for constituents required to be monitored (see Section B. above),
 - b. The daily flow data,
 - c. A summary of the discharge activities (when and where discharge occurred, description of type of discharge, etc.) including a report detailing the discharger's compliance or noncompliance with the requirements of the general permit and discharge authorization letter, and
 - d. For every item where the requirements of the general permit and discharge authorization letter are not met:
 - 1) A statement of the actions undertaken or proposed which will bring the discharge into full compliance with requirements at the earliest time, and
 - 2) A timetable for implementing the proposed actions.
 - e. If no discharge occurs during the previous monitoring period, a letter to that effect shall be submitted in lieu of a monitoring report.
4. All reports shall be signed by a responsible officer or duly authorized representative of the discharger and shall be submitted under penalty of perjury.

Ordered by _____



Gerard J. Thibeault
Executive Officer

May 5, 2004